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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION  
13

14 FRANK A. GRUCEL, JR., Derivatively on )  
Behalf of EXTREME NETWORKS, INC., )

15 Plaintiff, )  
16 )

17 vs. )

18 GORDON L. STITT, et al., )

19 Defendants, )  
20 )

21 – and – )

22 EXTREME NETWORKS, INC., a Delaware )  
corporation, )

23 Nominal Defendant. )  
24 )  
25 )  
26 )  
27 )  
28 )

No. C-07-02848-PVT

STATEMENT OF NON-OPPOSITION

1 On June 8, 2007, plaintiff Frank A. Grucel, Jr. filed a Motion to Consolidate Actions and to  
2 Appoint Frank A. Grucel, Jr. Lead Plaintiff and Appoint Lerach Coughlin Stoia Geller Rudman &  
3 Robbins LLP Lead Counsel, setting it for hearing on July 17, 2007. This motion was electronically  
4 filed in the first-filed of three related cases, *Wu v. Stitt et al.*, No. C-07-02268-RMW, so there is no  
5 question that all plaintiffs in all related cases received notice of the motion. Per Local Rule 7-3, the  
6 deadline for filing an opposition to said motion was June 26, 2007, 21 days before the hearing date.  
7 ***To date, no opposition has been filed.*** Accordingly, plaintiff Grucel respectfully requests that his  
8 motion be granted in its entirety.

9 On June 28, 2007, the Court continued the hearing date for plaintiff Grucel's motion to July  
10 27, 2007, and all parties received notice of this. Even if the changed hearing date was incorrectly  
11 perceived by counsel to automatically continue the briefing schedule, which it does not, the deadline  
12 for filing an opposition to plaintiff Grucel's motion would have been July 6, 2007 (21 days before  
13 the new July 27, 2007 hearing date). Defendant Extreme Networks, Inc. filed a Statement of Non-  
14 Opposition to plaintiff Grucel's motion on July 6, 2007. However, no opposition to this motion was  
15 filed by any plaintiffs in the related actions.

16 Having realized that they wholly failed to file a timely opposition to plaintiff Grucel's  
17 motion, plaintiffs Yenna Wu and Linda Erikson now attempt to make an end run around the Local  
18 Rules by filing their own separate Motion to Consolidate Related Actions and Appoint Lead  
19 Plaintiffs and Lead Counsel on July 10, 2007, which urges the Court to select plaintiffs Wu and  
20 Erikson as lead plaintiffs with their counsel Schiffrin Barroway Topaz & Kessler, LLP as lead  
21 counsel. The Wu/Erikson motion provides no explanation for their failure to oppose plaintiff  
22 Grucel's motion. Indeed, it does not even acknowledge that plaintiff Grucel's motion is on file and  
23 unopposed.

24 In an improper letter to the Court filed last night, plaintiffs Wu and Erikson are now  
25 requesting that the hearing date for plaintiff Grucel's motion be delayed so as to allow plaintiff  
26 Grucel's unopposed motion to be heard simultaneously with the competing Wu/Erikson motion.  
27 Plaintiff Grucel objects to a change to the July 27, 2007 hearing date for his motion as it is proposed  
28 merely for the improper purpose of skirting the Local Rules requiring that parties file opposition

1 papers to motions which they oppose and that they do so on a timely basis. This sort of gameplaying  
2 should not be countenanced, and only serves to underscore that plaintiff Grucel, and his counsel  
3 Lerach Coughlin Stoia Geller Rudman & Robbins LLP, are best suited to lead the litigation.

4 For the reasons set forth above, and in plaintiff Grucel's unopposed motion, plaintiff Grucel  
5 respectfully requests that his motion be granted in its entirety.

6 DATED: July 13, 2007

Respectfully submitted,

7 LERACH COUGHLIN STOIA GELLER  
8 RUDMAN & ROBBINS LLP  
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13 /s/  
14 AELISH M. BAIG

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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 13, 2007.

/s/

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## Mailing Information for a Case 5:07-cv-02848-RMW

### Electronic Mail Notice List

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### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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